(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE DEC 0 5 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary school teacher for in Maryland. Since 2008, the petitioner has taught at Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement.

Earlier in this proceeding, attorney represented the petitioner. He prepared the Form I-140 petition and, later, a response to a request for evidence (RFE), including a cover letter on his letterhead, and mailed the RFE response from his New York address, rather than from the petitioner's Maryland address. Subsequently, however, Mr. did not prepare or sign the Form I-290B Notice of Appeal; the petitioner's personal statement on appeal includes no mention of legal representation; and the petitioner mailed the appeal from her own Maryland address. Form I-290B advises that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. Therefore, the record contains no indication that Mr. is still the petitioner's attorney of record. The term "prior counsel" in this decision shall refer to Mr.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's

> services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree.[1] The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT 90), Pub.L. 101–649, 104 Stat. 4978, (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

---

[1] A credential evaluation in the record states that the petitioner's February 2005 Master of Arts diploma from [redacted] Philippines, is equivalent to a United States master's degree. Her Maryland Educator Certificate issued in 2008, however, shows her "Highest Degree" as a "Bachelor's." Even if the petitioner's foreign master's degree is not equivalent to a United States master's degree, her post-baccalaureate experience is equivalent to a master's degree under the regulation at 8 C.F.R. § 204.5(m)(3)(i)(B).

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on February 27, 2012. In a statement submitted with the initial filing, the petitioner stated:

> I served the Philippine public school system for over fifteen years. Being well-equipped with skills to coach, I trained the best students to compete for district, division and regional level competitions in Science and Campus Journalism. I was named "Outstanding Teacher of the Year" by the administrators and staff members of I passed the rigid selection process for demonstration teacher. I garnered the Best Demonstration Teaching Award (Regional Level) – Project ISIP (Improving Science Instructional Program) granted by the Department of Education-Region III, Philippines as a result of competition from the chosen schools in the region. . . .
>
> In August 2008, I was hired to teach at Maryland. . . . To further enhance my skills, I attended several workshops. . . . As always, I persevere in achieving the highest level of competency in the teaching profession. My versatility in teaching is demonstrated through my success in increasing the reading abilities of my students. I was awarded for superior achievement on Developmental Reading Assessment (DRA) increases of students. The instructional approaches that I used have shown consistent progress through data-driven assessments. As a Kindergarten teacher for three years, I am proud to say that my students can read on-grade and above-grade level. Not one stayed below grade level, which means that they are all prepared for future schooling. Now, being the kindergarten grade-level chairperson, I initiate field trips. . . . An Extended Learning Opportunity (ELO) is also a great accomplishment that our team is offering to our students who are struggling in Math and Reading.

The petitioner submitted copies of various certificates she received from and other schools where she has worked. Some certificates named her an "Outstanding Staff Member" and "Most Outstanding Teacher," while others recognized specific achievements such as improved student performance and coaching students in regional competitions. Other certificates establish her service as a facilitator and speaker at various training sessions and other gatherings.

The petitioner submitted several letters from faculty and administrators of schools where she has worked, as well as parents of her students, a former high school classmate, and the mayor of a city on the Philippines where the petitioner previously worked. These witnesses praised the petitioner's

abilities and character, but they did not claim that her work has had a significant impact outside of the communities where she has worked.

The petitioner's initial submission established her professional competency and dedication to teaching, but did not address the issue of the national interest waiver.

On July 13, 2012, the director issued a request for evidence, instructing the petitioner to submit evidence to meet the guidelines set forth in *NYSDOT*. In response, prior counsel asserted that the beneficiary's "profession as [a] 'Highly Qualified Elementary Science Teacher' is national in scope and will impart national-level benefits in improving Elementary Science Education." Prior counsel stated that a decline in the quality of science education in the United States has contributed to the economic recession of the past few years. Establishing the national significance of science education, however, does not mean that the work of one teacher produces benefits that are national in scope. The *NYSDOT* decision explains: "while education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement of section 203(b)(2)(B) of the Act." *Id.* at 217 n.3. Prior counsel did not address this passage from the precedent decision.

Prior counsel stated:

> Since a 'National Elementary Science Teacher' is not even a real concept but more of metaphysical cognition [*sic*], undersigned wishes to once again posit a realistic proposition upon which to establish that the self-petitioner's contributions will impart national-level benefits.
>
> Even the curricula used by each state education department in the United States vary from each other.
>
> In other words, since not all NIW cases are based on prevailing Acts of United States Congress, it is but harmless to assert that if an NIW Petition is made with premise on some prevailing Acts of United States Congress, that by itself renders the proposed employment national in scope.

While Congress has passed education-related legislation, the national interest inherent in education does not cause every teacher to meet the national scope prong of the *NYSDOT* national interest test. Prior counsel cited the No Child Left Behind Act of 2001 (NCLBA), Pub.L. 107-110, 115 Stat. 1425 (Jan. 8, 2002), and other legislation and policy initiatives that put special emphasis on education. Of these initiatives, the only identified statute that specifically addressed immigration was IMMACT 90. IMMACT 90 created the national interest waiver, but also (1) identified teachers as members of the professions and (2) specified that members of the professions holding advanced degrees are, as a rule, subject to the job offer requirement. Counsel, therefore, claims an intent behind the legislation that is at odds with the plain wording of that same legislation.

Prior counsel contended that the labor certification process presents a "dilemma" because "the employer is required by No Child Left Behind (NCLB) Law . . . to employ highly qualified teachers," but, by the Department of Labor's standards, school teachers "require only a bachelor's degree." Citing the petitioner's "Master's degree plus over 20 years of experience," prior counsel claimed that the labor certification process "would not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind."

Section 9101(23) of the NCLBA defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, neither the petitioner's master's degree nor her experience is required for "highly qualified" status under the NCLBA. Prior counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Prior counsel stated that labor certification "covers only the education and work experience qualifications" of job applicants, and that "even if two (2) teachers have exactly the same education degrees and work experience, their effectiveness cannot be identical." Therefore, prior counsel concluded, "the labor certification process would not in any way [yield] an identically effective Science teacher as" the petitioner. Counsel cited no evidence to support this claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Any objective qualifications which are necessary for the performance of the occupation can be articulated in an application for alien labor certification; the fact that the alien is qualified for the job does not warrant a waiver of the job offer/labor certification requirement.

Prior counsel listed various certificates that the petitioner received, and asserted that these materials "established her influence" and therefore "cannot just be ignored." Prior counsel did not explain how any of the materials demonstrated the petitioner's impact on education beyond the local level.

Prior counsel stated that another [redacted] teacher received a national interest waiver, and asked that the present petition "be treated in the same light." While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, prior counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. The only stated similarity is that the beneficiary of the approved petition is "also a teacher in [redacted]."

The director denied the petition on February 5, 2013, because the petitioner had met only the "substantial intrinsic merit" prong of the *NYSDOT* national interest test. On appeal, the petitioner asserts that her father's military service in the United States Navy inspired her desire to immigrate to the United States, and states:

> I may not be the best nor the greatest in my field but I would like to prove that I can be an asset to your government. . . . I graduated Valedictorian in high school, Cum Laude in college and finished my masters. . . . I became [an] outstanding teacher to my school, district and region in the Philippines and in [the] United States. The petitioner's ability is not available to most of the available U.S. workers. My interest to serve the country, make an impact to the youth of [the] United States of America and help the future of young American[s] to achieve the highest potential in the realm of Education, inspired me to continue my teaching career.

To qualify for the waiver, one need not "be the best [or] the greatest in [one's] field." In this instance, the petitioner has not established, under the guidelines set forth in *NYSDOT*, that it is in the national interest to waive the job offer requirement that normally applies to members of the professions (such as teachers) holding an advanced degree. The record does not show that the petitioner has had a discernible influence on elementary education beyond the jurisdictions where she has worked. While education is in the national interest, the impact of a single schoolteacher in one elementary school would not be in the national interest for purposes of waiving the job offer requirement. *NYSDOT* at 217 n.3.

By statute, engaging in a profession (such as teaching) does not presumptively entitle such professionals to the national interest waiver. Congress has not established the existence of any blanket waiver for teachers. Eligibility for the waiver rests not on the basis of the overall importance of a given profession, but rather on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.